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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,626	07/02/2003	Gunter Steinert	70918	4066
7590	10/04/2004		EXAMINER	
McGLEW AND TUTTLE, P.C. SCARBOROUGH STATION SCARBOROUGH, NY 10510-0827			JACKSON, ANDRE K	
			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,626

Applicant(s)

GUNTER ET AL.

Examiner

André K. Jackson

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,7,11,13,16 and 17 is/are rejected.
- 7) ☒ Claim(s) 2,4,5,8-10,12,14,15 and 18-20 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the thread arranged on one of the bars must be shown or the feature canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The specification is objected to because reference character "6" has been used to designate both magnetic coil body and gas covette support on page 5. Correction is needed.

Claim Objections

3. Claims 9 and 19 contain the trademark/trade name POCAN ®. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe module material and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1,6,11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark.

Regarding claim 1, Stark discloses in the patent entitled "Apparatus and method for measuring the concentration of paramagnetic gas" a first cylindrical housing for accommodating a magnet coil body (Figure 1), the first cylindrical housing part extending concentrically around a central axis thereof (Figure 1); a second cylindrical housing part for accommodating another magnet coil body, the second cylindrical housing part extending concentrically around a central axis of each housing part (Figure 1); a first metallic cylindrical bar arranged in the area of the central axis of the first housing part for use as a magnet pole for the measuring head (Figure 1); a second metallic cylindrical bar arranged in the area of the central axis of second housing part for use as a magnet pole for the measuring head, the first metallic cylindrical bar and the second metallic cylindrical bar being located at spaced locations with a defined air gap in the assembled state of the measuring head (Figure 1); a sample gas cuvette support provided

in the air gap between the housing parts for positioning a sample gas cuvette holder, the sample gas cuvette support being provided with a gas inlet and gas outlet (Figures 1-3). Stark does not explicitly disclose where the housing is made from a steel alloy. However, it is well within the purview of the skilled artisan to provide the housing with a material that does not interfere with the performance of the instrument.

Regarding claim 6, Stark does not explicitly disclose where the first housing part and the second housing part are made of machining steel. However, it is well within the purview of the skilled artisan to provide the housing with a material that does not interfere with the performance of the instrument.

Regarding claim 11, Stark discloses a first magnet coil body; a first housing for accommodating the first magnet coil body (Figure 1); a second magnet coil body; a second cylindrical housing part for accommodating the second magnet coil body (Figure 1); a first metallic bar arranged centrally in the first housing part for use as a magnet pole for the measuring head (Figure 1); a second metallic bar arranged centrally in the second housing part for use as a magnet pole for the measuring head, the first metallic bar and the second metallic bar being located at spaced locations with a defined air gap in the assembled state of the measuring head (Figure 1) and a sample gas cuvette holder; and a sample gas cuvette support provided in the air gap between the first housing part and

the second housing part for positioning the sample gas cuvette holder, the sample gas cuvette support being provided with a gas inlet and gas outlet (Figures 1-3). Stark does not explicitly disclose where the housing is made from a steel alloy. However, it is well within the purview of the skilled artisan to provide the housing with a material that does not interfere with the performance of the instrument.

Regarding claim 16, Stark does not explicitly disclose where the first housing part and the second housing part are made of machining steel. However, it is well within the purview of the skilled artisan to provide the housing with a material that does not interfere with the performance of the instrument.

6. Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark in view of Krupp.

Regarding claim 3, Stark does not explicitly disclose a stationary sleeve provided for the connection to an external gas sampling system. However, Krupp discloses in the patent entitled "Magnetic gas measuring instrument" a stationary sleeve provided for the connection to an external gas sampling system (13,13'). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Stark to include a stationary sleeve provided for the connection to an

external gas sampling system. By adding this feature the apparatus would be able to provide the particular gas to be measured.

Regarding claim 13, Stark does not explicitly disclose a stationary sleeve provided for the connection to an external gas sampling system. However, Krupp discloses a stationary sleeve provided for the connection to an external gas sampling system (13,13'). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Stark to include a stationary sleeve provided for the connection to an external gas sampling system. By adding this feature the apparatus would be able to provide the particular gas to be measured.

7. Claims 7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark in view Meyer.

Regarding claim 7, Stark does not explicitly disclose where the first housing part is formed as one piece with the first cylindrical bar, and the second housing part is formed as one piece with the second cylindrical bar. However, Meyer discloses in the patent entitled "Oxygen sensing method and apparatus" where the first housing part is formed as one piece with the first cylindrical bar, and the second housing part is formed as one piece with the second cylindrical bar (Figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Stark to include where the first housing part is formed as one piece with the first cylindrical bar, and the second

housing part is formed as one piece with the second cylindrical bar. By adding this feature the user would be able to have a small system with less non-integrated parts.

Regarding claim 17, Stark does not explicitly disclose where the first housing part is formed as one piece with the first cylindrical bar, and the second housing part is formed as one piece with the second cylindrical bar. However, Meyer discloses where the first housing part is formed as one piece with the first cylindrical bar, and the second housing part is formed as one piece with the second cylindrical bar (Figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Stark to include where the first housing part is formed as one piece with the first cylindrical bar, and the second housing part is formed as one piece with the second cylindrical bar. By adding this feature the user would be able to have a small system with less non-integrated parts.

8. Claims 2,4,5,8-10,12,14,15 and 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to André K. Jackson whose telephone

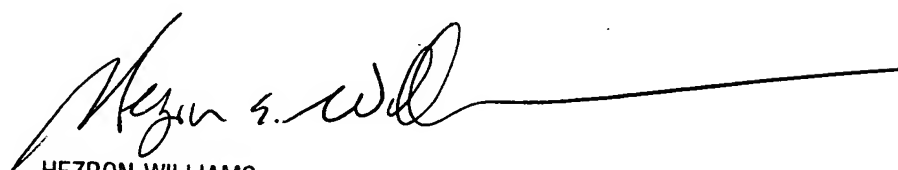
number is (571) 272-2196. The examiner can normally be reached on Mon.-Thurs. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.J.

September 30, 2004


HEZRON WILLIAMS
SUPERVISORY PATENT EXAMINER
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